

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
Federal-Joint Board on)	CC Docket No. 96-45
Universal Service)	

REPLY COMMENTS OF:

STATE OF IDAHO PUBLIC UTILITIES COMMISSION
STATE OF INDIANA STAFF OF THE UTILITY REGULATORY COMMISSION
STATE OF MAINE PUBLIC UTILITIES COMMISSION
STATE OF MONTANA PUBLIC SERVICE COMMISSION
STATE OF NEBRASKA PUBLIC SERVICE COMMISSION
STATE OF NEW MEXICO CORPORATION COMMISSION
STATE OF UTAH PUBLIC SERVICE COMMISSION
STATE OF UTAH DIVISION OF PUBLIC UTILITIES
STATE OF VERMONT PUBLIC SERVICE BOARD
STATE OF VERMONT DEPARTMENT OF PUBLIC SERVICE
STATE OF WEST VIRGINIA PUBLIC SERVICE COMMISSION
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The signing states, hereinafter referred to as “Joint Reply States,” respectfully submit the following reply comments in response to initial comments filed in the above referenced NPRM.

Summary

These reply comments cover the following issues.

- The NPRM is very broad and lacks specificity. A supplemental NPRM containing specific proposals and definitive rules should be issued after the Joint Board has reviewed the comments and reply comments filed in this docket. Parties will then be able to provide specific recommendations on such proposed rules.
- The Joint Reply States recommend that the Joint Board not limit the size of the Universal Service Fund. Rather, the fund must be adequately sized to meet the universal service, comparable, and affordable rate requirements mandated in the Federal Telecommunications Act of 1996.
- The subscriber line charge (SLC) should not be increased. There is no consensus for raising this charge. It should be eliminated and replaced by a flat charge to interexchange carriers.
- The Joint Board should allow more time for the development and evaluation of the Benchmark Cost Model (BCM) and allow parties another comment cycle to more fully evaluate this proposal.
- The FCC and Joint Board should provide federal funding directly to states to help fund discounted telecommunications services to schools, libraries, and health care providers as recommended in the comments of NYNEX and others.
- The proposal, made by NECA, to create a universal service advisory board should be adopted no matter who is selected as the basic fund administrator.
- Finally, the Joint Reply States believe that Universal Service support should be based on costs rather than rates because rates are not readily comparable and basing Universal Service Fund support on rates may lead to otherwise undesirable rate setting decisions.

A supplemental NPRM Should Be Established with More Specific and Definitive Proposals.

The initial NPRM in this proceeding was extremely broad and lacked specificity. A supplemental NPRM containing specific proposals should be issued with data gleaned from the comments and reply comments filed in this docket. Commenters would then be able to provide specific recommendations to the Joint Board and the FCC.

The Joint Reply States support the comments of the Missouri Commission that suggest that before this proceeding can be decided, a separate NPRM should be issued that includes more specific proposals. More definite proposals and rules included in an NPRM will allow parties to provide comments which include calculations of the true financial impacts the proposals will have on companies and the USF.

At this time, it is very difficult or impossible for affected parties to quantify the impacts of any of the proposals made because the specific proposed rule changes are not stated. The NPRM makes a wide range of proposals, some of which could result in very large cost recovery shifts for some states and for some areas within a state. This is true, at least in part, because the proposals made in the NPRM were not been drafted after engaging in a quantitative analysis of existing cost data. The NPRM is almost completely silent as to the basis for its proposals and whether those proposals have been drawn from the analysis of existing data or from other evidence. This is understandable given the Act's broad mandate and short time frames. We hope that some of the needed analysis is now or soon will be taking place at the FCC or by Joint Board staff. The large number of proposals and possible combinations of those proposals make any conclusive analysis of the consequences of this NPRM very difficult.

The Commission should use this NPRM as a preliminary proceeding which can be used to

help the Commission narrow the issues and structure a more definite proposal and spell out definitive proposed rules. The definitive rules can then be priced out by parties in this proceeding and used as a basis for meaningful and specific comments. Those comments will provide the Joint Board and the Commission with far more meaningful information than the general proposals that have been provided so far.

The most important reason a supplemental NPRM is required is the need for the Commission to consider and roll in the results of the Commission's impending part 69 proceeding and interconnection NPRM. The Commission must consider the universal service ramifications resulting from its decision in the interconnection proceeding and of the state-approved interconnection rates resulting from sections 251 and 252 of the Act. To the extent the Commission's Decision in the interconnection rule making limits the state's flexibility in setting rates for unbundled interconnection elements, larger amounts of Universal Service funding may be required.

The Size of the Universal Service Fund Should Not Be Limited.

The Joint Reply States believe that the Universal Service Fund should not be capped. We agree with the comments of Alaska, Guam, and others that the purpose of the USF is to promote universal service, therefore the size of the fund must be adequate to achieve universal service objectives. The size of the fund should be sufficient to attain the universal service goals stated in section 254 of the 1996 Telecommunications Act (Act) in the most cost efficient manner.

Three commenters among others have taken the position that the size of the fund should be limited. Bell Atlantic, at page 9 of its comments stated that the size of the fund should be capped at existing levels; MCI, at page 10 of its comments, stated that the fund should be

limited to residential customers; Frontier Telephone stated at page 7 of their comments that the larger carriers should not qualify for high cost support. We strongly disagree with these positions. As stated in our original comments, limiting the size of the fund overall, or limiting which customers or carriers can participate in the fund is inconsistent with the Act. The Act requires funding to ensure universal service at comparable rates. The Act makes no mention of doing so within funding level constraints. The Act requires reasonably comparable rates between urban and rural areas and between states; to attempt to do so within any predetermined funding limit is contrary to the requirements of the Act. Any constraints that prevent rates from being reasonably comparable may be unlawful.

Furthermore, the Act establishes a new standard of affordable rates (section 254(I)) which may necessitate funding beyond that required merely to keep subscribers on the network. An arbitrary limitation on the size of the fund before the Joint Board and the Commission have determined what funding is required to meet the standard would thwart the intent of Congress.

The Subscriber Line Charge Should Not Be Increased.

The Joint Reply States strongly oppose any increase in the Subscriber Line Charge (SLC). The original comments from state commissions were almost unanimous in their opposition to increasing the SLC. Most of the smaller local operating companies (LEC s) also opposed increasing this charge. In its initial comments, The Puerto Rico Telephone Co., at page 4, argued that increasing the rates would have adverse universal service implications and would result in its customers dropping off its network. Even the larger LEC s, which might be expected to support an increase, were not unanimous in that position. For example, NYNEX at page 4-5 of its comments, did not support increasing the SLC. The interexchange carriers

were split on this issue. MCI pointed out in its comments, at page 14, that there may be no economic justification for increasing the SLC. As pointed out in the Joint States initial comments, *Smith vs Illinois*, provides that the interexchange carriers must be charged a portion of loop costs and that they should not be borne entirely by end users. The elimination of the carrier common line charge (CCLC) and the recovery of the lost CCLC revenues by an increase in the SLC would do just that.

The Joint Reply States support replacing the existing SLC with a flat charge to interexchange carriers to recover non-traffic sensitive costs. The Joint Reply States proposal to recover all interstate allocated non-traffic sensitive costs from interexchange carriers on a flat basis will allow the Commission to decrease or eliminate the interstate CCLC.

More Time Should Be Allowed and Additional Comments Should Be Taken Regarding the Benchmark Costing Models.

We have reviewed the comments made by U S West, NYNEX and others proposing the use of a benchmark costing model (BCM). Their comments did not address all of the concerns raised by the states in initial comments. The high cost of serving extremely remote areas not accessible by road, and the high cost of connecting certain remote areas to the public switched network are concerns that have not yet been addressed. The staff of the Utah Commission currently has a working version of the BCM and is analyzing it in conjunction with U S West Communications and others. However, that analysis is not complete since refinements to the model are still being developed. There is substantial additional work that must be completed before the effectiveness and accuracy of the BCM can be determined. Within the public comment period currently allowed by the Joint Board in this NPRM, the Joint Reply States

cannot recommend the use of the model for achieving federal USF goals. The Joint Reply States therefore propose that more time be allowed for development and evaluation of the BCM and that an additional round of comments be established in order for the Joint Board and the FCC to receive, on the record, complete and accurate information regarding the appropriateness of the BCM.

Funds for Schools, Libraries, and Health Care providers Should Be Provided Directly to the States.

A critical question regarding the bringing of benefits to schools, libraries and health care providers is what services should be supported. We agree with Nynex's comments that additional information needs to be gathered from the educational, library and health care communities before moving forward (Nynex, page 16). Therefore, we endorse the idea of implementing a second phase (Teleport Communications Group, page 20) or issuing a second NPRM or an NOI (Time Warner Communications Group Holdings, Inc., page 17, Century Telephone Enterprises, Inc. and TDS Telecommunications Corp., page 18). It is premature to determine what services should be funded through the universal service fund for schools, libraries, or health care providers without an understanding of whether those services will meet the users needs.

We also believe that a one size fits all approach will not meet the needs of these entities. As recommended by the Wyoming PSC at page 14 of its comments, the states can offer assistance in developing answers to questions of what constitutes advanced telecommunications and information services. Some National goals may be set. However, the process should be capable of addressing the various, and very different requirements and challenges that are faced in individual states (Wyoming at page 15). Therefore, we urge the Commission to

adopt the NYNEX Education Plan (NEP) (Nynex, page 18). The NEP strikes the proper balance between the Commission's role of establishing competitively neutral rules that enhance schools' access to advanced telecommunications and information services and roles of state and local education agencies in setting education policy. The NEP recognizes that schools around the country will have various needs and that these various needs are best assessed at the local and state level. It therefore, properly maintains the primary role of state and local education agencies in setting education policy.

The Nynex plan complements the approach recommended by the National Cable Television Association (NCTA) that state commissions are generally in the best position to determine the level at which services have been discounted (page 19). The state commission may require or request service providers to submit information as to their determination of the required offset; however, this information should not serve as the basis for support because of the obvious incentive for abuse. The NCTA recommends that state commissions perform an independent analysis of the required offset (page 19). Further, NCTA comments that for purposes of providing services to rural health care providers, reliance on a state commission analysis may prove least burdensome to the Commission, and most reliable, in that the state commission may be better equipped to determine comparability on a localized level (page 21).

The Cincinnati Bell Telephone Company comments also state that health, education and library issues should be addressed on a state level, rather than by federal mandate (page 13). To facilitate state commission involvement, we advocate the creation of an advisory board on education, library, and health care issues within each state. Several states, including Utah, Idaho, and Maine, have existing advisory boards which are operating successfully. These boards provide guidance for state commissions as to the services and discounts needed by schools, libraries and health care providers. States with existing advisory boards have

realized great value in that they provide information about educational needs and the utilization of telecommunications services within their state. The South Carolina PSC noted in its comments that educational and health care specialists should assist in the determination of the services which should be included in universal service (page 3).

To the extent that the Nynex plan proposes uniform discounts to schools, that provision could be interpreted as being inconsistent with Section 254(h)(1)(B) of the Act. Under that section, the Commission must set discounts in amounts appropriate and necessary to ensure affordable access and use of advanced telecommunications services. State Commission s have a similar responsibility to set discounts for intrastate services to the extent necessary to meet the standards of the act. Therefore, the Nynex plan may need to be modified to comply with the uniform affordability mandates of section 254(h)(1)(B) of the act. To ensure uniform affordability, discounts to schools located in high cost areas may need to be set at levels higher than discounts available to schools in average cost or below average cost areas. Unless cost differentials are taken into account, advanced telecommunications services for schools located in high cost areas will not be affordable as required by the Act.

A Universal Service Advisory Council Should be Established.

The Joint Reply States support the proposal made by NECA in its comments (pg 23), that a universal service advisory council be appointed to advise the fund administrator with respect to funding issues. This advisory board, consisting of representatives of fund recipients, contributors, state regulators, and consumer groups, will ensure the neutrality of the fund s administration and will assure that the concerns of all parties are considered. This board should be created regardless of who is appointed the administrator of the fund.

The Cost of Providing Service Must Be the Basis for Determining Comparable Rates.

The Joint Reply States recommend that the Joint Board base the distribution of USF support on a measure of costs rather than rates charged by companies. There is a wide variation in rate design policies throughout the states and even between companies within a state. The specific methods of determining what costs are then applied to specific services vary widely and are often major issues of contention. It is therefore not possible to make meaningful comparisons of rates for Universal Service Fund purposes. Basing USF support on comparable rates would also create incentives for states or companies shift costs to local service elements in order to maximize Universal Service support. Using costs to determine USF support overcomes the concerns expressed by several commenting parties regarding the comparability of rates.